UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	07 CR 410-7
v.	)	
	)	Judge Harry D. Leinenweber
RONNIE HOGUE	)	

GOVERNMENT'S SENTENCING POSITION PAPER &
RESPONSE TO DEFENDANT'S SENTENCING MEMORANDUM

THE UNITED STATES OF AMERICA, through its attorney, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, respectfully submits this position paper on sentencing, and asks this Court to sentence defendant Ronnie Hogue to the statutorily authorized maximum sentence of 48 months' imprisonment.

I. BACKGROUND

On October 1, 2009, Ronnie Hogue entered a plea of guilty to a superseding information charging him with having knowingly and intentionally used a communication facility, namely, a telephone, in committing and in causing and facilitating the commission of a felony, in violation of Title 21, United States Code, Section 846, namely, conspiracy to possess with intent to distribute and to distribute controlled substances, in violation of Title 21, United States Code, Section 843(b). The charge contained in the superseding indictment stemmed from Ronnie Hogue's use of a phone on May 29, 2007 at approximately 11:00 a.m. to alert Calvin Buffington to law enforcement's stop of a vehicle containing approximately 10 kilograms of cocaine that belonged to the Calvin Buffington drug trafficking organization ("Buffington DTO").

Ronnie Hogue's involvement in the Buffington DTO extended beyond the foregoing instance in which he followed a car containing cocaine. Indeed, between April or May 2007 and June 28, 2007, Ronnie Hogue assisted Calvin Buffington with re-rocking cocaine at least three times in the basement of Michael Buffington's home. On at least one occasion in mid-June 2007, Calvin Buffington entrusted Ronnie Hogue to deliver cocaine to his customers. In the two to three short months Ronnie Hogue was involved in the Buffington DTO, he was responsible for the possession and distribution of at least 15 but less than 50 kilograms of cocaine.

II. GOVERNMENT'S POSITION REGARDING THE GUIDELINES RANGE

As a matter of process, the Court must first properly calculate the guidelines range. *Gall v. United States*, 128 S. Ct. 586, 596-97 (2007). The government agrees that the PSR correctly calculated Ronnie Hogue's advisory guidelines range. A summary of those calculations is set forth below.

Base Offense Level (U.S.S.G. § 2D1.1):	34
Acceptance of Responsibility (U.S.S.G. § 3E1.1(a)):	-2
Timely Plea (U.S.S.G. § 3E1.1(b)):	-1
Total Offense Level	31

PSR at 9-11, lines 167-203. Ronnie Hogue has no criminal history points and his criminal history category is I. PSR at 11, lines 205-217. Ronnie Hogue's advisory guidelines range is 108 to 135 months' imprisonment. PSR at 20, lines 502-504. The guideline range is restricted to the statutorily authorized maximum sentence of 48 months. PSR at 20, lines 502-504.

III. SENTENCING FACTORS UNDER §3553(a)

Once the Court properly calculates the guidelines range it should consider the Section 3553(a) factors, and adequately explain the chosen sentence, including an explanation for any variance from the guidelines range. *Gall*, 128 S. Ct. at 596-97. In this case, the Section 3553(a) factors weigh in favor of this Court imposing the statutorily authorized maximum sentence of 48 months' imprisonment. Such a sentence is 60 months lower than the low end of Ronnie Hogue's advisory sentencing guidelines range.

A. Nature & Circumstances of the Offense

The offense and relevant conduct in which Ronnie Hogue engaged was serious in nature. Ronnie Hogue was involved in the activities of the Buffington DTO for a short two to three months. During that short period of time, however, Ronnie Hogue possessed and distributed well over 20 kilograms of cocaine. For example, between April or May 2007 and June 28, 2007, Ronnie Hogue participated in the re-rocking of at least 14 kilograms of cocaine. On May 29, 2007, Ronnie Hogue oversaw Johnnie Hughes' transportation of 10 kilograms of cocaine. Law enforcement intercepted the shipment of cocaine before it reached Calvin Buffington. In mid-June 2007, Calvin Buffington asked Ronnie Hogue to deliver 3 kilograms of cocaine to customer Antonie Boddie.

The cocaine with which Ronnie Hogue was involved was ultimately resold to hundreds if not thousands of users in the Chicago area and elsewhere. Ronnie Hogue victimized those who used the substances he and his co-conspirators sold, the loved ones of those users, the members of the communities in which the users lived, and the public at large. In addition, Ronnie Hogue victimized members of his own family with his conduct. For example, Ronnie Hogue delivered 3 kilograms of cocaine to Antonie Boddie at the home of Calvin Buffington's stepchild and children with Ronnie

Hogue's sister. Ronnie Hogue lived at the home with Calvin Buffington and his sister between October 2006 and June 28, 2007, during which time he also served as a caretaker for the children. The nature and the circumstances of the offense therefore support this Court imposing a term of imprisonment of 48 months.

B. History & Characteristics

Ronnie Hogue "grew up in a relatively safe, middle-class neighborhood and was provided adequate sustenance, access to necessary medical care, ethical and moral instruction, and adult supervision." PSR at 12, lines 232-234. According to Ronnie Hogue, his parents were not abusive and neither he nor they abused alcohol or drugs. PSR at 12, lines 235-237. Through his early college years, Ronnie Hogue was actively involved with sports and had only one contact with law enforcement for the relatively minor offense of operating an uninsured motor vehicle. PSR at 11, lines 208-214; PSR at 12, lines 242-245.

Ronnie Hogue is an intelligent man who had every opportunity to live a law abiding life. In the Spring 2007, Ronnie Hogue knowingly and intentionally threw those opportunities away by becoming a member of the Buffington DTO. Since the time of his arrest, Ronnie Hogue has completed his college education and maintained employment.[1] Ronnie Hogue's post-arrest achievements further demonstrate that he could have made the decision to not become involved in the business of the Buffington DTO. Ronnie Hogue's decision to become involved in the Buffington DTO was one driven by greed and disregard for others and warrants the imposition of the statutory

[1]Ronnie Hogue reported that he has he earned an annual salary of $30,000 in his role as the owner of Deloni LLC, a property management business, between January 2008 and the present. PSR at 15-16, lines 349-359. According to the PSR, Ronnie Hogue is also receiving unemployment benefits. PSR at 18, line 456. As a result, Ronnie Hogue has a positive monthly cash flow and has the ability to pay a low-end fine within the guideline range. PSR at 19-20, liens 452-497.

maximum term of imprisonment of 48 months.

C. Weight of the Sentencing Guidelines

Section 3553(a) requires the court to impose a sentence that is "sufficient, but not greater than necessary," to comply with the purposes of sentencing.[2] In order to determine the "particular" sentence to impose, the court must consider the familiar statutory factors listed in § 3553(a)(1)-(7). One of those factors is the advisory range set by the Sentencing Guidelines, and another is the Commission's policy statements. § 3553(a)(4), (a)(5). Although the Sentencing Guidelines are advisory only, "[a]s a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." *Gall v. United States*, 552 U.S. 38, 49 (2007). For two reasons, this court should give serious consideration to the advisory guidelines range.

First, the Sentencing Guidelines are the *sole* factor in § 3553(a) that provides any objective sentencing range that can practicably promote the overall goal of minimizing unwarranted sentencing disparities, which is itself a statutorily-mandated factor, § 3553(a)(6). *See United States v. Mykytiuk*, 415 F.3d 606, 608 (7th Cir. 2005) ("The Guidelines remain an essential tool in creating a fair and uniform sentencing regime across the country."); *see also Booker v. United States*, 543 U.S. 220, 250 (2005) ("Congress' basic statutory goal – a system that diminishes sentencing disparity"); *id.* at 253 ("Congress' basic goal in passing the Sentencing Act was to move the sentencing system in the direction of increased uniformity"); *id.* at 267 (rejecting other remedial alternatives because they were inconsistent with the "basic objective of promoting uniformity in sentencing"). The Supreme Court created the advisory system to "continue to move sentencing in Congress' preferred direction, helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individual sentences where necessary." *Booker*, 543 U.S. at 264-65. The only way to prevent widespread unwarranted disparities is to give serious consideration to the Guidelines.

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[2]Those purposes are the need for the sentence "(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." § 3553(a)(2)(A)-(D).

Second, the Guidelines generally deserve serious consideration because they are "the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions." *Gall*, 552 U.S. at 46. It is true that there is no "presumption" that a Guidelines sentence is the "correct" sentence, *Rita v. United States*, 551 U.S. 338, 351 (2007),[3] and that there is "broad" sentencing discretion post-*Booker*. *United States v. Demaree*, 459 F.3d 791, 794-95 (7th Cir. 2006). However, the Commission is "a respected public body with access to the best knowledge and practices of penology." *United States v. Goldberg*, 491 F.3d 668, 673 (7th Cir. 2007). Furthermore, the Commission is charged by statute to periodically review and revise the Guidelines as the Commission collects comments and data from numerous sources in the criminal justice system, 28 U.S.C. § 994(o), and these ongoing efforts to refine the Guidelines are another reason to seriously consider the advisory range.

In the event that this court exercises its discretion to sentence outside the advisory range,

[3]Although the Seventh Circuit has held that Guidelines 'departures' are no longer relevant after *Booker*, it is true that the Supreme Court referred multiple times to 'departures' from the Guidelines, as a category distinct from § 3553(a) variances, in *Rita*, 551 U.S. 338, 344, 351, 357 (2007). However, even after *Rita*, the Seventh Circuit has continued to express the view that departures are obsolete. *United States v. Dale*, 498 F.3d 604, 611 n.6 (7th Cir. 2007); *United States v. Turner*, 569 F.3d 637, 640 (7th Cir. 2009).

there are guideposts for evaluating what the extent of the deviation should be and when a non-Guidelines sentence will be deemed unreasonable on appeal. These guideposts are set forth in Supreme Court and Seventh Circuit cases.

First, the Supreme Court instructs that it is "clear that a district judge must give serious consideration to the extent of any departure from the Guidelines and must explain his conclusion that an unusually lenient or an unusually harsh sentence is appropriate in a particular case with sufficient justifications." *Gall*, 552 U.S. at 46. The degree of the deviation from the advisory guidelines range is relevant in choosing the particular sentence:

> If [the judge] decides that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance. We find it uncontroversial that a major departure should be supported by a more significant justification than a minor one.

Id. at 50. In *Gall*, the Supreme Court affirmed a sentence of probation in an Ecstasy conspiracy case where the low-end of the range was 30 months of imprisonment. Although the Court acknowledged the qualitative difference between probation and a sentence of imprisonment, the defendant presented extensive mitigating facts: his only role in the crime was to deliver drugs to other co-conspirators; he had voluntarily stopped distributing drugs "after deciding, on his own initiative, to change his life," which distinguished him from the "vast majority of defendants convicted of conspiracy"; after withdrawing from the drug conspiracy, he graduated from college and obtained steady employment; when confronted by law enforcement agents, he fully confessed to the crime; when indicted, he moved back to the district in which he was charged and started his own successful business; and he proffered a "small flood" of letters praising his character and work ethic. *Id.* at 41-43, 54-56.

In contrast to the significant and uniquely-personal mitigating facts in *Gall*, the Seventh Circuit warns that major deviations from the advisory range are more likely to be unreasonable if the grounds for the deviation are "overstated mitigating factors" or "normal incidents" of the offense. *United States v. Carter*, 538 F.3d 784, 790 (7th Cir. 2008). Similarly, the Seventh Circuit admonishes that sentences relying on "common" factors, rather than "particularized" ones, to justify variances are less likely to be substantively reasonable. *Id.*; *see also United States v. Vrdolyak*, 593 F.3d 676, 681-83 (7th Cir. 2010). To be sure, these are only guides and not bright-line rules for assessing reasonableness, but they are helpful in preventing excessive sentencing disparities.

IV. CONCLUSION

Based on the foregoing, the government respectfully requests that this Court sentence Ronnie Hogue to the statutorily authorized maximum term of 48 months' imprisonment.

Respectfully submitted,

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